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7 NOT FOR CITATION IN THE
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 TETSUYA JOE NOMURA,
13 Plaintiff,
14 v.
15 YOUTUBE, LLC,
16 Defendant.

Case No. C-11-01208 HRL

17
18 ORDER GRANTING DEFENDANT
YOUTUBE, LLC'S MOTION FOR
SUMMARY JUDGMENT OF
NONINFRINGEMENT AND
DENYING DEFENDANT YOUTUBE,
LLC'S MOTION TO DISMISS FOR
FAILURE TO PROSECUTE
PURSUANT TO F.R.C.P. 41(b)

19 [Re: Docket Nos. 122, 125, 134¹]

20 On July 18, 2013, defendant YouTube, LLC ("YouTube") filed concurrent motions for
21 summary judgment of noninfringement of U.S. Patent No. 7,254,622 ("622 Patent") and to dismiss
22 for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Dkt. Nos. 122, 125. On
23 September 10, 2013, the court held a hearing on YouTube's motions. At the time of the claim
24 construction briefing and hearing, plaintiff Tetsuya Joe Nomura ("Nomura") was proceeding with
25 the assistance of counsel. Following the court's Claim Construction Order, Nomura filed a motion
26 for substitution of counsel, Dkt No. 97, and Nomura's counsel filed a motion to withdraw as
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¹ Unredacted motion for summary judgment of noninfringement.

1 counsel, Dkt. No. 101, which the court granted on April 11, 2013, Dkt. No. 107. Nomura is
 2 currently proceeding *pro per*.

3 Because YouTube has demonstrated that its accused products do not meet multiple claim
 4 limitations of the '622 Patent as construed by the court, and Nomura has identified no genuine issue
 5 to preclude summary judgment, the court: (1) GRANTS YouTube's motion for summary judgment
 6 of noninfringement; and (2) DENIES YouTube's motion to dismiss for failure to prosecute as moot.

7 **I. BACKGROUND**

8 **A. The '622 Patent and the Claim Construction**

9 Nomura owns the '622 Patent, titled "Video-on-Demand [("VOD")] System." A detailed
 10 description of the claimed invention is contained in the court's February 8, 2013 Claim Construction
 11 Order. Dkt. No. 90 at 2-3. The '622 Patent is generally directed to a three tiered architecture for
 12 inputting, converting, and storing video data files that are ultimately accessed, downloaded, and
 13 viewed by customers. Most relevant to the courts noninfringement determination are four features
 14 discussed below that are required by every claim of the '622 Patent.

15 First, the first and second tiers of Nomura's VOD system are "configured to not be remotely
 16 accessible by customers." '622 Patent, claims 1 and 12.² The court construed this term to mean that
 17 the first and second tiers are "configured to prevent or deny access by a customer's remote device."
 18 Claim Construction Order 5-7. Thus, customers, or "system users,"³ can only directly download
 19 video files that are stored in the third tier of the VOD system, which is a remotely accessible server.
 20 '622 Patent col.6 ll.46-48.

21 Second, under the parties' agreed upon claim construction adopted by the court, the video
 22 files in the second-generation video data storage unit (or "tier 2") are "organized by category and
 23 indexed in master files." Claim Construction Order 7.

24 Third, Nomura's VOD system contains "an error detection system"⁴ that monitors the
 25 downloading of video data. The error detection system stops the downloading of the video data file
 26 if an error is detected, and restarts the downloading from just before the point of corruption. *See*

27 ² Claims 1 and 12 are the independent claims in the '622 Patent, from which all the other claims
 28 depend. Thus, all claims in the patent contain this limitation.

³ The parties stipulated that the claim term "customers" means "system users."

⁴ The court adopted the plain and ordinary meaning for "error detection system."

1 e.g., '622 Patent col.1 ll.7-23, 45-49. In the event of repeated errors during downloading, the claims
2 require that the error detection system “restore”⁵ the data file from a lower tier server, or from a
3 back-up data storage unit. *Id.*

4 Fourth, all of the claims of the '622 Patent require a “high speed data link” configured “to
5 prevent uploading of video data files from the high tier server [or] customer to the lower tier
6 server.” Claim Construction Order 17-18. Such unidirectional flow of data resists data corruption
7 on of the video data files on the lower tier server. *See id.*; '622 Patent col.1 ll.42-44.

8 Dependent claim 10 and independent claim 12 also require that the VOD system inputs
9 video data in the first instance into “first” and “second” data input stations. Based on claim
10 differentiation and the clear language in the specification, the court construed the “first data input
11 station” to require a hardware device. Claim Construction Order 9-11.

12 **B. The Accused Product**

13 Nomura accuses YouTube's video sharing system of infringing claims 1 through 12 of the
14 '622 Patent. YouTube's accused system also includes three tiers similar to the tiers disclosed in the
15 '622 Patent: (1) a “Core Data Center” or “Core” server that correlates to the tier 1 first generation
16 storage unit of Nomura's VOD system; (2) numerous “Tailserve” servers that are similar in general
17 functionality to the tier 2 second generation storage unit of Nomura's VOD system; and (3) “Edge
18 Cache” servers which are similar in general functionality to the tier 3 remotely accessible servers in
19 Nomura's VOD system.

20 However, YouTube's video sharing system differs from Nomura's VOD system in a variety
21 of ways. First, YouTube system users *can* make direct connections to YouTube's Core server (tier
22 1) and Tailserve servers (tier 2). Berkheimer Decl. ¶¶ 8, 9, Dkt. No. 135. Second, YouTube's
23 Tailserve servers function as “a mid-tier caching node[s] for less popular content.” *Id.* ¶ 9 and Ex.
24 D. According to YouTube, the video files in the Tailserve servers are not “organized by category
25 and indexed in master files.” *Id.* ¶ 10. Third, YouTube's video sharing system deletes or destroys
26 corrupt video data files, but never restores these corrupt files. *Id.* ¶ 12. Fourth, pursuant to the
27 Transmission Control Protocol version RFC791, video files within YouTube's video sharing system
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⁵ The court adopted the plain and ordinary meaning for the term “restore.”

1 flow bi-directionally throughout the system servers. *Id.* ¶ 13 and Ex. E. Finally, all video files
2 initially uploaded to YouTube's video sharing system are electronically transferred to the Core
3 server by a system user. *Id.* ¶ 11. Thus, YouTube's system does not include a hardware device that
4 is capable of initially uploading video data files from their original storage media. *Id.*

5 II. ANALYSIS

6 a. Summary Judgment Standard

7 Summary judgment is appropriate when there is no genuine issue of material fact such that
8 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v.*
9 *Catrett*, 447 U.S. 317, 322-23 (1986). Where a defendant seeks summary judgment of
10 noninfringement, "nothing more is required than the filing of . . . a motion stating that the patentee
11 had no evidence of infringement and pointing to the specific ways in which accused systems did not
12 meet the claim limitations." *Exigent Tech. v. Atrana Solutions, Inc.*, 442 F.3d 1301, 1309 (Fed. Cir.
13 2006). If the movant makes such a showing, the burden of production then shifts to the patentee to
14 "identify genuine issues that preclude summary judgment." *Optivus Tech., Inc. v. Ion Beam*
15 *Applications S.A.*, 469 F.3d 987, 990 (Fed. Cir. 2006). Infringement is a question of fact that "is
16 amenable to summary judgment where, *inter alia*, no reasonable fact finder could find
17 infringement." *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 149 F.3d 1309, 1315 (Fed. Cir.
18 1998). As with any summary judgment motion, the court views all facts in a light most favorable to
19 the nonmoving party and draws all reasonable inferences in its favor. *IMS Tech., Inc. v. Haas*
20 *Automation, Inc.*, 206 F.3d 1422, 1429 (Fed. Cir. 2000). "[A]n ordinary *pro se* litigant, like other
21 litigants, must comply strictly with the summary judgment rules." *Thomas v. Ponder*, 611 F.3d
22 1144, 1150 (9th Cir. 2010) (citing *Bias v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007)).

23 b. Patent Infringement

24 A patent infringement analysis requires two steps. First, the court construes the meaning and
25 scope of the asserted claims of the patents, which is a question of law. *See Freedman Seating Co. v.*
26 *Am. Seating Co.*, 420 F.3d 1350, 1356-57 (Fed. Cir. 2005). "Second, the court must determine
27 whether the accused product . . . contains each limitation of the properly construed claims, either
28 literally or by a substantial equivalent," which is a question of fact. *Id.* at 1357 (Fed. Cir. 2005).

1 “Literal infringement of a claim exists when every limitation recited in the claim is found in the
2 accused device.” *Kahn v. Gen. Motors Corp.*, 135 F.3d 1472, 1477 (Fed. Cir. 1988). “[T]he
3 absence of even a single limitation of [a claim] from the accused device precludes a finding of
4 literal infringement.” *Id.* If a specific claim limitation is not literally present in the accused product,
5 a patentee may establish infringement under the doctrine of equivalents by proving that the accused
6 product “performs substantially the same function in substantially the same way to obtain the same
7 result.” *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 608 (1950) (quotation
8 omitted); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 24-29 (1997)
9 (requiring the equivalence analysis to be performed on a limitation by limitation basis).

10 c. Application

11 Here, YouTube argues that its accused system does not infringe the '622 Patent either
12 literally or under the doctrine of equivalents because its video sharing system does not include at
13 least four claim limitations, as construed by the court, that are required by every claim of the '622
14 Patent. Specifically, YouTube asserts that its accused system: (1) does not prevent a user's remote
15 device from accessing the first or second system tiers; (2) does not organize video data files by
16 category or index them in master files within the second tier; (3) does not restore or repair corrupt
17 temporary video data files; and (4) does not prevent bidirectional flow of video files between the
18 system tiers. Further, YouTube asserts that its accused system does not include a hardware device,
19 which is required by claims 10 and 12 of the '622 Patent. YouTube argues that YouTube's system
20 does not infringe under the doctrine of equivalents because there is nothing equivalent to the
21 required features of the '622 Patent, e.g., there is no error detection and correction system or means
22 for preventing user access to the first and second tiers, in its video sharing system.

23 Moreover, YouTube argues that it does not induce or contribute to infringement of the '622
24 Patent because “there can be no indirect infringement without direct infringement.” *Akamai Techs.,*
25 *Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301, 1308 (Fed. Cir. 2012) (en banc).

26 In opposition to YouTube's motion, Nomura filed a document titled: “Plaintiff's Reply to
27 Declaration of Any Berkheimer in Support of [YouTube's] Motion for Summary Judgment of Non-
28 Infringement.” Dkt. No. 126. In this filing, Nomura generally alleges that he “has the right to

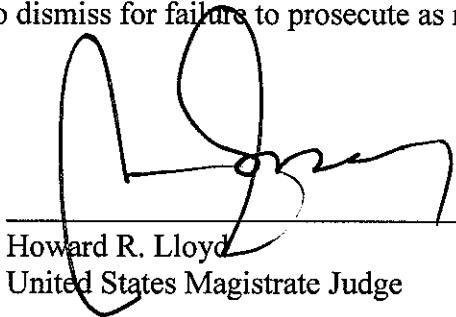
1 exclude any other ‘Video on Demand Business’ Methods and Process on the Internet.” *Id.* at 2.
 2 Nomura then accuses YouTube’s “methods and processes of their business” as “clearly infringing”
 3 the ’622 Patent, but he does not compare the claims of the ’622 Patent to the accused product. *Id.*
 4 Nearly a month after YouTube’s Reply, Nomura filed another document with the court, titled:
 5 “[YouTube] is clearly infringing the ’622 Patent. Respectfully Submit to Court Plaintiff’s Proof of
 6 Evidence and the Fact of the Truth From YouTube Dkt [122].” Dkt. No. 137. In this filing,
 7 Nomura states that he agrees with the court’s claim construction order. *Id.* at 4. Nomura then
 8 directs the court to a power point slide showing the three tiers of YouTube’s video sharing system
 9 and states: “The above Power Point Slide shows clearly that ‘YouTube’ is infringing the ’622
 10 [P]atent.” *Id.* at 7-8. Again, Nomura fails to compare the claims of the ’622 Patent to the accused
 11 product. Nomura fundamentally fails to engage in a patent infringement analysis, which requires a
 12 limitation by limitation comparison of the asserted patent claims to the accused product. Each and
 13 every claim limitation *must* be present in the accused product for the product to infringe. While the
 14 power point slide generally depicts the three tiers of servers in YouTube’s video sharing system, it
 15 does not show the existence of all of the required claim limitations as construed by the court.

16 YouTube has provided evidence to the court showing that its accused video sharing system
 17 lacks at least five essential features of every asserted claim of the ’622 Patent. Even viewing
 18 Nomura’s filings as liberally as possible, the court concludes that Nomura has not shown a genuine
 19 issue of fact to preclude summary judgment of noninfringement, either literally or under the
 20 doctrine of equivalents. In the absence of direct infringement, there can be no claim for indirect
 21 infringement. *Akamai*, 692 F.3d at 1308.

22 III. ORDER

23 For the foregoing reasons, the court GRANTS YouTube’s motion for summary judgment of
 24 noninfringement and DENIES YouTube’s motion to dismiss for failure to prosecute as moot.

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 27 Dated: September 12, 2013
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 Howard R. Lloyd
 United States Magistrate Judge